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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,976	08/20/2001	Jesse Max Dean	60,491-002	4221

27305 7590 03/18/2003

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EXAMINER

ACKUN, JACOB K

ART UNIT

PAPER NUMBER

3712

DATE MAILED: 03/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

<b>Office Action Summary</b>	<b>Application N .</b>		<b>Applicant(s)</b>	
	09/931,976		DEAN, JESSE MAX	
	<b>Examiner</b>		<b>Art Unit</b>	
	Jacob K. Ackun Jr.		3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> . | 6) <input type="checkbox"/> Other:  |

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1. Claims 6-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 6, 10, and 11 recite that the second sheet has an "open edge". It is not clear how an edge of a sheet can be said to be open.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 10, 11, 12, 15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Patience. The claims read on the device of Patience in the configuration shown in Fig 2. The first, second and third sheets are the back panel 12, front panel 16 and sterile content 15, such as a gauze dressing, respectively. While the preamble of the claims has been given little patentable weight, the package of Patience is inherently capable of use as a waste removal device.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-9, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patience. Patience discloses most of the elements of the claims but does not disclose that the third sheet (the package content in the form of a gauze dressing or similar article) is attached to one of the first and second sheets. It is noted in this regard that the reference specifically teaches

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that in the practice of the invention disclosed therein, anchoring of the packaging contents to the package by adhesive, as done in the prior art, would not be desirable because it would inhibit exposure and ready removal of the contents from the package.

On the other hand it is also noted that Patience teaches that anchoring the package contents by the temporary pressure taught therein, as well as by the aforementioned prior art adhesive, has the advantage of achieving control over the package contents (see column 1 lines 60-66, column 2 lines 1-17, and column 3 lines 17-20). Furthermore the reference teaches that the prior art method of control, ie., use of adhesive, may be satisfactory for adhesive bandages but is not applicable to other types of sterile content (see column 2 lines 6-8). Accordingly, it would have been obvious to temporarily anchor the gauze dressing, adhesive bandages or similar content to be retained in the package of Patience (such as by the use of well known temporary adhesive, easy release coatings etc) for the purpose of facilitating better or additional control of the gauze or bandages while still permitting their ready removal from the package.

6. Claims 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Finch et al. Finch is interpreted in a manner similar to that of Patience. The claims read on the package of Finch in the configuration shown in Fig 5. The third sheet is the packaged absorbent article.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob K. Ackun Jr. whose telephone number is (703)308-3867. The examiner can normally be reached on Monday through Friday 8.30AM-5.00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703)308-1745. The fax phone numbers for the

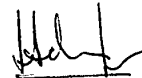
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organization where this application or proceeding is assigned are (703)305-3579 for regular communications and (703)305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.



Jacob K. Ackun Jr.  
Primary Examiner  
Art Unit 3712

J.A.  
March 12, 2003